IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.221 OF 2005

Safia Begum Shahzed Mirza .. Appellant

vs.

Bombay Municipal Corporation .. Respondent.

Mr.M.V.Holamji for the Appellant.

Mrs.Geeta Joglekar for the Respondent.

CORAM : A.S.OKA, J.

DATED : 5th April, 2005.

P.C. :

1. Admit. Respondent waives service. Taken up for hearing forthwith.

2. By the impugned Judgment and Order dated 30.12.2004, the learned Trial Judge has declined to grant ad-interim relief in favour of the Appellant Plaintiff.

3. The challenge in the suit filed by the Appellant Plaintiff is to the communication dated 8.7.2004 by which the Respondent Corporation has alleged that the Appellant has encroached upon area of 6ft 9 inches x 19ft infront of room No.10. By the

impugned communication the Appellant was called upon to submit the proof of the fact that the structure was in existence prior to 1.1.1995 and he was informed that on his failure, the offending structure will be removed. A reply was sent by the Appellant on 12.7.2004 stating therein that the alleged unauthorised extension of veranda was in existence prior to the occupation of room No.10 by the Appellant and the alleged unauthorised construction has been regularised by accepting extra rent. By communication dated 28.12.2004, the Assistant Commissioner of the Respondent Corporation informed the Appellant that the Offending Structure was unauthorized and therefore it will be removed.

4. The learned Counsel appearing for the Appellant Submitted that while passing the impugned order no reasons are assigned by the learned Trial Judge. He has invited my attention to the receipt dated 26.12.1996 which describes that regularisation charges for veranda have been received by the Respondent Corporation in respect of he Room No.10. Reliance is also placed on receipt dated 27.12.2001 in which there is a reference to acceptance of the veranda charges.

5. On dated 4.3.2005, the learned Advocate for the

Respondent Corporation sought time to take instructions on the said receipts which allegedly show that regularization charges for veranda have been accepted by the Respondent Corporation. The learned Counsel for the Respondent was granted time till 21.3.2005. On 21.3.2005 again time was sought and was granted. However, the learned Counsel appearing for the Respondent Corporation states that even today also the concerned Officer has not given instructions to her.

6. While considering the prayer for grant of ad-interim relief it is true that the learned Trial Judge was not expected to record very detailed reasons. However, atleast reasons in brief should have been indicated. Reliance is placed on the receipts referred to above and the Respondent Corporation is unable to throw light at this stage on the said receipts. Therefore, in my view, a case is made out for grant of ad-interim relief. I am not recording any detailed finding on the said receipts as the Respondent Corporation is yet to file a reply to the Notice of Motion.

7. Hence I pass the following order :

i) Impugned Order dated 30.12.2004 is

quashed and set aside.

ii) Till the disposal of the Notice of Motion taken out by the Appellant for temporary injunction in L.C.Suit (St) No.6037 of 2004, both the parties will maintain status quo in all respects as of today in respect of the suit structure.

iii) The Respondent Corporation will file reply to the Notice of Motion on or before 10.6.2005.

iv) The learned Trial Judge will finally decide the Notice of Motion on its own merits on or before 31.7.2005.

. Appeal is disposed of in above terms.

. Parties and the concerned Court to act on the authenticated copy of this order.

(A.S.Oka, J.)